

GUIDELINES FOR IMPLEMENTATION OF THE  
NORTHERN DISTRICT'S CRIMINAL JUSTICE ACT PLAN  
(As Amended 10.3.02)

The Criminal Justice Act Administration Committee for the Northern District of California adopts the following regulations for implementation of the provisions of this district's Criminal Justice Act Plan.

A. Meetings. The Administration Committee shall meet at such time and place as its Chair directs but at least annually in order to select panel members for the forthcoming year.

B. Quorum. Six members shall constitute a quorum.

C. Terms of Committee Members. The members of the Administration Committee who are judicial officers shall serve at the pleasure of the Chief Judge but no longer than five years. The Federal public Defender and the Clerk of the Court shall serve ex officio. All other members shall serve a three-year term and may be reappointed for a successive term.

D. Composition of Standing Sub-Committees. The Standing Appointments Sub-committees for San Francisco/Oakland and for San Jose shall each at least consist of one district judge, one magistrate-judge, two experienced criminal attorneys with prior panel experience and the Federal Public Defender. With the exception of the Federal Public Defender, members of each sub-committee shall have their chambers or principal place of business in the geographic area served by that sub-committee.

The Standing Appointments Appeals Sub-committee shall at least consist of one district judge, two experienced criminal attorneys with prior panel and appellate experience and the Federal Public Defender. The chair of the Administration Committee shall select the district judge member of each sub-committee who shall select the magistrate-judge and attorney members of his or her sub-committee. Each sub-committee shall select its own chair. Members shall serve terms of three years and may be reappointed for a successive term.

Terms for Panel Members. Panel members on the San Francisco/Oakland panel will serve for a three-year term. Upon adoption of the revised Criminal Justice Act Plan, the initial panel shall be composed of members appointed for one-year, two-year, and three-year terms. Attorneys who have completed their term may, after a one year wait, seek reappointment for a new three-year term. Those members serving an initial one-year term are eligible to immediately reapply for a full three-year term upon expiration of that one-year term. All other panel members seeking to be reappointed to the panel must wait one year from

the expiration of their term before being considered for reappointment. Panel members on the San Jose and Appellate Panels will serve for the same terms, with the exception that they need not wait one year before seeking reappointment for an additional term.

F. Qualifications for Panel Members. Applicants should have their principal place of business in the area served by the division of the court to which they are making application and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Sentencing Guidelines, and, in the absence of unusual circumstances, shall have the following qualifications:

1. At least five years of ongoing private federal criminal practice, or a seven-year criminal practice in state or federal court, or three years of experience as an Assistant United States Attorney or Assistant Federal Public Defender.

2. In the case of the trial panels, five federal or state felony jury trials or any combination thereof. Two of the required trials may be replaced with equivalent experience such as unusually complex matters which are settled short of trial, criminal appeals which require unusual knowledge or effort or substantial civil jury trials. Any applicant who applies and has not tried two federal criminal jury trials must audit two cases from start to finish pursuant to the mentor program established under this plan or its equivalent before being appointed to the panel. This audit shall include watching at least one full criminal trial.

3. In the case of the appellate panel, ten federal or state felony appeals or combination thereof. Five of the required appeals may be replaced with equivalent experience such as criminal trials, habeas corpus proceedings, or complex criminal matters settled short of trial.

G. Mandatory Continuing Legal Education. Each panel member shall annually attend at his or her own expense five hours of continuing legal education specifically concerning federal criminal practice and shall so certify by December 1st of each year to the Federal Public Defender on forms available at that office. These five hours of CLE may be satisfied by programs which are also used to satisfy State Bar CLE requirements.

H. Mentor Program. If requested by the Federal Public Defender, each trial panel member shall serve as a mentor to a non-panel attorney who has not tried two federal criminal jury trials. To fulfill this requirement, the trial panel member shall allow the non-panel attorney to audit all aspects of a federal criminal case, including client conferences, strategy determination, motion and trial preparation and court

appearances. Panel members are expected to agree to reasonable mentoring requests if they have not fulfilled their annual requirement in this program and to endeavor to involve the non-panel attorney as closely as possible with the substance of the representation. The Federal Public Defender shall administer this program.

I. Mandatory Removal. Any member whose right to practice in this district or state has been suspended or revoked shall be removed from the panel. Any member who refuses to accept an appointment on three occasions in one year shall be removed from the panel. Removal for these reasons is automatic and the procedures listed in section E do not apply. Any panel member so removed may reapply for panel membership after waiting one year. Panel members may take a leave of absence without losing their panel membership provided the leave of absence exceeds three months.

J. Discretionary Removal. A panel member for good cause shown, may be removed from the panel for failure to represent his or her client in a vigorous, professional and ethical way. A person so removed may later apply for readmission to the panel.

K. Removal Procedures. Any person who believes that a panel member is incompetent, engaged in misconduct or other unprofessional behavior, or has neglected his duties to his client to the extent that removal from the panel is warranted may file a complaint. Complaints should be filed promptly so that fair consideration of the facts is possible. A complaint may be dismissed when the passage of time renders the facts incapable of being established through investigation.

The following procedures should be followed:

1. A letter describing the circumstances of the complaint should be addressed to the Chair of the Administration Committee. If it is addressed to a member of the Court or another member of the Administration Committee it shall be referred to the Chair.

2. The letter of complaint should set forth with particularity the facts that the claim of misconduct, incompetency, or neglect of duty is based on. The statement should not be longer than five pages (five sides) and the paper should be 8 ½ x 11 inches in size. Normally, the statement of facts will include:

- a. a statement of what occurred;
- b. the time and place of the occurrence(s);
- c. any other information that would assist an

investigator in checking the facts, such as the presence of witnesses and their names and addresses.

3. The letter of complaint should be typewritten if possible. If not typewritten, it must be legible.

4. Documents that demonstrate incompetency, misconduct, or neglect of duty should be filed with the letter.

5. The letter of complaint must be signed and the complainant's address and day time telephone number must be provided. Anonymous complaints are disfavored. If an anonymous complaint is received, the Administration Committee may pursue a response it feels is appropriate. The panel member who is the subject of the complaint shall be advised of its nature unless it relates to criminal activity, the investigation of which would be jeopardized by disclosure.

6. Within 10 working days of receipt of the complaint by the Chair of the Administration Committee, the Chair will dismiss the complaint:

a. if it pertains to a question of representation resolvable by a court of law, or if available alternative procedural remedies have not been exhausted;

b. if the complaint is frivolous;

c. if the complaint is not based upon allegations of incompetence, misconduct, or neglect of duty.

When a complaint is dismissed, the subject panel member will receive a copy of the complaint with a written statement from the Chair dismissing it.

7. Within 10 working days of the date of the receipt of the complaint, the Chair will recommend to members of the Administration Committee that a complaint has been filed which merits investigation.

8. Should the members of the Administration Committee agree to investigate the complaint, a copy of the complaint shall be furnished to the panel member, unless it relates to criminal activity, the investigation of which would be jeopardized by disclosure. The Administration Committee will ask the panel member to formally respond to the allegations of the complaint in a letter to the Administration Committee within 15 working days of the date he or she receives the complaint.

9. The Administration Committee may undertake any investigation necessary to resolve the matter or may appoint a sub-committee to do so. Either committee may interview the

complainant, the panel member and any witnesses. At the conclusion of the investigation, the Administration Committee will give the panel member an opportunity to respond to the results.

10. Within 90 days of the receipt of the complaint, the Administration Committee will dismiss the complaint if its allegations are unfounded or, if true, of a nature not serious enough to warrant removal of the panel member. If the Administration Committee finds the allegations are true and that they warrant removal, the Chair will notify the panel member in writing of his/her removal from the panel.

11. The original complaint and all papers, records and reports will be kept in confidential files by the Clerk of the Court.

12. The Chair of the Administration Committee may extend a deadline for good cause.

13. The entire complaint process shall not be made public until the formal action of the Chair of the Administration Committee to dismiss the complaint or the formal action of the Administration Committee to remove the panel member.

14. These procedures are not meant to preclude remedies available through malpractice or negligence suits arising from the provision of representational services.

L. Compensation. No claim for compensation or reimbursement will be honored unless filed within forty-five (45) days of the termination of the representation unless good cause is shown.